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Questions and Answers About the Association Provision of the Americans with Disabilities Act

Abstract

The Americans with Disabilities Act (ADA) is a federal law that prohibits discrimination on the basis of disability. Title I of the ADA makes it unlawful for any employer to discriminate against a qualified applicant or employee because of a disability in any aspect of employment. The ADA covers employers with 15 or more employees, including state and local governments. Section 501 of the Rehabilitation Act provides the same protections for federal government employees and applicants. In addition, most states have their own laws prohibiting employment discrimination on the basis of disability. Some of these state laws may apply to smaller employers and provide protections in addition to those available under the ADA.

Keywords

ADA, person, disabilities, law, discrimination, employer, employment, work, association, job, provision

Questions and Answers About the Association Provision of the Americans with Disabilities Act

The Americans with Disabilities Act (ADA) is a federal law that prohibits discrimination on the basis of disability. Title I of the ADA makes it unlawful for any employer with 15 or more employees (including a state or local government employer) to discriminate against a qualified applicant or employee because of a disability in any aspect of employment. In addition to protecting qualified applicants and employees with disabilities from employment discrimination, one ADA provision – the "association" provision -- protects applicants and employees from discrimination based on their **relationship or association** with an individual with a disability, whether or not the applicant or employee has a disability.[\[1\]](#)

The purpose of the association provision is to prevent employers from taking adverse actions based on unfounded stereotypes and assumptions about individuals who associate with people who have disabilities. Thus, it makes unlawful actions such as refusing to hire an individual who has a child with a disability based on an assumption that the applicant will be away from work excessively or be otherwise unreliable, firing an employee who works with people who are HIV-positive or have AIDS based on the assumption that the employee will contract the disease, or denying an employee health care coverage available to others because of the disability of an employee's dependent. This document explains the requirements of the ADA's association provision and provides examples of how it applies to these and other employment situations.

1. What is the association provision of the ADA and to whom does it provide protection?

The association provision of the ADA prohibits employment discrimination against a person, whether or not he or she has a disability, because of his or her known relationship or association with a person with a known disability. This means that an employer is prohibited from making adverse employment decisions based on unfounded concerns about the known disability of a family member or anyone else with whom the applicant or employee has a relationship or association.

2. How close does the association or relationship with a person with a disability have to be for an individual to be protected by the association provision?

The ADA does not require a family relationship for an individual to be protected by the association provision. The key is whether the employer is motivated by the individual's relationship or association with a person who has a disability.

Example A: An employer overhears an employee mention to a co-worker that he tutors children at a local homeless shelter. The employer, recalling that the shelter in question is well-known for providing job placement assistance for people living with HIV/AIDS, terminates the employee because it believes that its image will be tarnished if its employees associate with the "kind of person" who contracts HIV/AIDS. The employer has violated the ADA's association provision even if the employee is only minimally acquainted with beneficiaries of the shelter who have HIV/AIDS, because it made an adverse employment decision based on concerns about the disabilities of people with whom the employee has an association.

3. What types of employer conduct does the association provision prohibit?

- An employer may not terminate or refuse to hire someone due to that person's known association with an individual with a disability.

Example B: An employer is interviewing applicants for a computer programmer position. The employer determines that one of the applicants, Arnold, is the best qualified, but is reluctant to offer him the position because Arnold disclosed during the interview that he has a child with a disability. The employer violates the ADA if it refuses to hire Arnold based on its belief that his need to care for his child will have a negative impact on his work attendance or performance.

Example C: A restaurant owner discovers that the chef's boyfriend is HIV-positive. The owner, fearing that the employee will contract the disease and transmit it to the customers through food, terminates the employee. This is a violation of the ADA's association

provision.[\[2\]](#)

- An employer may not deny an employee who has an association with a person with a disability a promotion or other opportunities for advancement due to that association.

Example D: Tiffany, a part-time salesperson at a large appliance store, applies for a full-time position. The manager hiring for the position rejects Tiffany's application because, having heard that Tiffany's mother and sister had breast cancer, he concludes that Tiffany is likely to acquire the same condition and be unable to reliably work the hours required of a full-time salesperson. This is a violation of the association provision of the ADA.

- An employer may not make any other adverse employment decision about an applicant or employee due to that person's association with a person with a disability.

Example E: The president of a small company learns that his administrative assistant, Sandra, has a son with an intellectual disability. The president is uncomfortable around people with this type of disability and decides to transfer Sandra to a position in which he will have less contact with her to avoid any discussions about, or interactions with, Sandra's son. He transfers her to a vacant entry-level position in the mailroom which pays less than Sandra's present position, but will allow him to avoid interacting with her. This is a violation of the ADA's association provision.

- An employer may not deny an employee health care coverage available to others because of the disability of someone with whom the employee has a relationship or association.

Example F: An employer who provides health insurance to the dependents of its employees learns that Jaime, an applicant for a management position, has a spouse with a disability. The employer determines that providing insurance to Jaime's spouse will lead to increased health insurance costs. The employer violates the ADA if it decides not to hire Jaime based on the increased health insurance costs that will be caused by his wife's disability.

Example G: In the previous example, it would also violate the ADA for the employer to offer Jaime the position without the benefit of health insurance for his dependents. The employer may not reduce the level of health insurance benefits it offers Jaime because his wife has a disability; nor may it subject Jaime to different terms or conditions of insurance.

- An employer may not deny an employee any other benefits or privileges of employment that are available to others because of the disability of someone with whom the employee has a relationship or association.

Example H: A company has an annual holiday party for the children of its employees. The company president learns that one of its newly hired employees, Ruth, has a daughter with Down Syndrome. Worried that Ruth's daughter will frighten the other children or make people uncomfortable, he tells Ruth that she may not bring her daughter to the party. Ruth has been denied the benefits and privileges of employment available to other employees due to her association with a person with a disability.

- An employer may not subject someone to harassment based on that person's association with a person with a disability. An employer must also ensure that other employees do not harass the individual based on this association.

Example I: Martin and his supervisor, Adam, have had an excellent working relationship, but Adam's behavior toward Martin has changed since Adam learned that Martin's wife has a severe disability. Although Martin has always been a good performer, Adam repeatedly expresses his concern that Martin will not be able to satisfy the demands of his job due to his need to care for his wife. Adam has begun to set unrealistic time frames for projects assigned to Martin and yells at Martin in front of co-workers about the need to meet approaching deadlines. Adam also recently began requiring Martin to follow company policies that other employees are not required to follow, such as requesting leave at least a week in advance. Adam has removed Martin from team projects, stating that Martin's co-workers do not think that Martin can be counted on to complete his share of the work "considering all of his wife's medical problems." Though Martin has complained several times to upper management about Adam's behavior, the employer does nothing. The employer is liable for harassment on the basis of Martin's association with an individual with a disability.

4. Does the ADA require an employer to provide a reasonable accommodation to a person without a disability due to that person's association with someone with a disability?

No. Only qualified applicants and employees with disabilities are entitled to reasonable accommodation.^[3] For example, the ADA would not require an employer to modify its leave policy for an employee who needs time off to care for a child with a disability.^[4] However, an employer must avoid treating an employee differently than other employees because of his or her association with a person with a disability.

Example J: Kyung, an employee at an accounting firm, requests a week of unpaid leave and is told by her supervisor that there will be no difficulty in granting the leave. Kyung then mentions that she will be using the leave to care for her mother with a disability, who is coming into town for medical treatments. The supervisor denies the leave request, telling Kyung that the firm's leave policy is not intended to cover this type of situation and that she should hire someone to look after her mother. A few days later, the supervisor approves Diego's request for a week of unpaid leave to attend a father-son camp with his son. If the firm grants requests for unpaid leave for certain personal or family reasons, it is a violation of the ADA's association provision to deny Kyung's request because she wishes to use the time to assist her mother with a disability.

Example K: A law firm permits its attorneys to use 100 hours of administrative leave a year to provide pro bono legal services. One attorney, Sylvia, wants to use these hours to work with a non-profit organization that provides legal and other services to individuals with psychiatric disabilities. The law firm denies her request because it does not believe that this type of work will reflect well on its image. If the firm allows attorneys to use administrative leave to provide pro bono legal services, it is a violation of the association provision of the ADA to deny Sylvia's request because she wishes to use the time to assist individuals with disabilities.

5. Does an employer have to provide health insurance coverage to employees who have dependents with disabilities beyond that provided to other employees?

No. As noted above, the ADA requires employers to provide employees with dependents who have disabilities equal access to whatever health insurance coverage is offered to other employees. An employer is not required to provide *additional* health insurance coverage under the ADA.

Example L: A state employer's health insurance plan will only pay for a certain number of days of inpatient care for employees' dependents each year. An employee informs the employer that his wife's disability will require more time in the hospital than the plan covers. The ADA does not require the employer to provide additional health insurance coverage to meet the wife's needs. A health insurance plan provision that limits the number of days of inpatient care for employee dependents affects individuals with many kinds of conditions, only some of which are disabilities. Consequently, the limitation is not a disability-based distinction and would not violate the ADA.^[5]

If, however, the employer's health insurance plan has terms or provisions which make disability-based distinctions (e.g., provisions that single out specific disabilities, groups of disabilities or disability generally), the plan itself may violate the ADA unless an employer can demonstrate that the plan provision is not a subterfuge to evade the purposes of the ADA.^[6]

LEGAL ENFORCEMENT

Any person who believes that his or her employment rights have been violated on the basis of an association with a person with a disability and wants to make a claim against an employer must file a "charge of discrimination" with the EEOC. The charge must be filed by mail or in person with the local EEOC office within 180 days from the date of the alleged violation. The 180-day filing deadline is extended to 300 days if a state or local anti-discrimination law also covers the charge.

The EEOC will notify the employer of the charge and may ask for responses and supporting information. Before a formal investigation, the EEOC may select the charge for EEOC's mediation program, which may prevent a time-consuming investigation of the charge. Participation in mediation is free, voluntary, and confidential.

If mediation is unsuccessful, the EEOC investigates the charge to determine if there is "reasonable cause" to believe discrimination has occurred. If reasonable cause is found, the EEOC will then try to resolve the charge. In some cases, where the charge cannot be resolved, the EEOC will file a court action. If the EEOC finds no discrimination, or if an attempt to resolve the charge fails and the EEOC decides not to file suit, it

will issue a notice of a "right to sue," which gives the charging party 90 days to file a court action. A charging party also can request a notice of a "right to sue" from the EEOC 180 days after the charge first was filed with the EEOC and may then bring suit within 90 days after receiving the notice. For a detailed description of the process, visit our website at http://www.eeoc.gov/charge/overview_charge_filing.html. For issues relating to federal employment, please refer to our website at <http://www.eeoc.gov/facts/fs-fed.html>.

Retaliation

The ADA prohibits retaliation by an employer against someone who opposes discriminatory employment practices, files a charge of employment discrimination, or testifies or participates in any way in an investigation, proceeding, or litigation. Persons who believe that they have been retaliated against may file a charge of retaliation with the EEOC as described above.

[1] See 42 U.S.C. § 12112(b)(4). Section 501 of the Rehabilitation Act provides the same protections for federal government employees and applicants. In addition, most states have their own laws prohibiting employment discrimination on the basis of disability. Some of these state laws may apply to smaller employers and provide protections in addition to those available under the ADA.

[2] According to the Department of Health and Human Services, HIV/AIDS is **not** a disease that can be transmitted through food handling. See [List of Infectious and Communicable Diseases which are Transmitted through the Food Supply](#) at 69 Fed. Reg. 59237 (October 4, 2004). For a discussion of actions an employer may take in compliance with the ADA when an applicant or employee may have a disease transmissible through food handling, see EEOC's *How to Comply with the Americans with Disabilities Act: A Guide for Restaurants and Other Food Service Employers*, questions 6-11, available at http://www.eeoc.gov/facts/restaurant_guide.html.

[3] A reasonable accommodation is any work-related modification that will permit an employee or prospective employee with a disability to participate in the job application process, to perform the essential functions of a job, or to partake in the same benefits and privileges of employment enjoyed by employees without disabilities. See *EEOC Guidance on Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act* (as revised October 17, 2002) at www.eeoc.gov/policy/docs/accommodation.html for more information about reasonable accommodation.

[4] Note, however, that an employee who needs leave to care for a spouse, child, or parent may be entitled to leave under the Family and Medical Leave Act (FMLA). The FMLA, which covers private employers with 50 or more employees and state and local government employers, provides up to 12 workweeks of unpaid leave during any 12-month period to care for a spouse, child, or parent with a serious health condition. The U.S. Department of Labor enforces the FMLA. For more information, go to www.dol.gov/esa/whd/fmla/.

[5] See Interim Enforcement Guidance on the Application of the Americans with Disabilities Act of 1990 to Disability-Related Distinctions in Employer Provided Health Insurance (Interim Enforcement Guidance) at www.eeoc.gov/policy/docs/health.html for more information on this issue.

[6] Id.

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